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SENATE BILL 173

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Steve Komadina

AN ACT

RELATING TO CAPITAL FELONY SENTENCING; PROVIDING FOR LIFE  
IMPRISONMENT WITHOUT POSSIBILITY OF RELEASE OR PAROLE;  
EXPANDING THE LIST OF AGGRAVATING CIRCUMSTANCES CONSIDERED IN A  
CAPITAL FELONY CASE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 31-18-14 NMSA 1978 (being Laws 1979,  
Chapter 150, Section 1, as amended) is amended to read:

"31-18-14. SENTENCING AUTHORITY--CAPITAL FELONIES. --

A. When a defendant has been convicted of a capital  
felony, ~~he~~ the defendant shall be punished by life  
imprisonment without possibility of release or parole or by  
death. The punishment shall be imposed after a sentencing  
hearing separate from the trial or guilty plea proceeding.  
However, if the defendant has not reached the age of majority

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1 at the time of the commission of the capital felony for which  
2 [he] the defendant was convicted, [he] the defendant may be  
3 sentenced to life imprisonment without possibility of release  
4 or parole but shall not be punished by death.

5 B. In the event the death penalty in a capital  
6 felony case is held to be unconstitutional or otherwise  
7 invalidated by the supreme court of the state of New Mexico or  
8 the supreme court of the United States, the person previously  
9 sentenced to death for a capital felony shall be sentenced to  
10 life imprisonment without possibility of release or parole. "

11 Section 2. Section 31-18-23 NMSA 1978 (being Laws 1994,  
12 Chapter 24, Section 2, as amended) is amended to read:

13 "31-18-23. THREE VIOLENT FELONY CONVICTIONS--MANDATORY  
14 LIFE IMPRISONMENT--EXCEPTION.--

15 A. When a defendant is convicted of a third violent  
16 felony, and each violent felony conviction is part of a  
17 separate transaction or occurrence, and at least the third  
18 violent felony conviction is in New Mexico, the defendant  
19 shall, in addition to the sentence imposed for the third  
20 violent conviction [~~when that sentence does not result in~~  
21 ~~death~~], be punished by a sentence of life imprisonment. The  
22 life imprisonment sentence shall be subject to parole pursuant  
23 to the provisions of Section 31-21-10 NMSA 1978.

24 B. The sentence of life imprisonment shall be  
25 imposed after a sentencing hearing, separate from the trial or

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1 guilty plea proceeding resulting in the third violent felony  
2 conviction, pursuant to the provisions of Section 31-18-24 NMSA  
3 1978.

4 C. For the purpose of this section, a violent  
5 felony conviction incurred by a defendant before ~~[he]~~ the  
6 defendant reaches the age of eighteen shall not count as a  
7 violent felony conviction.

8 D. When a defendant has a felony conviction from  
9 another state, the felony conviction shall be considered a  
10 violent felony for the purposes of the Criminal Sentencing Act  
11 if that crime would be considered a violent felony in New  
12 Mexico.

13 E. As used in the Criminal Sentencing Act:

14 (1) "great bodily harm" means an injury to the  
15 person that creates a high probability of death or that causes  
16 serious disfigurement or that results in permanent loss or  
17 impairment of the function of any member or organ of the body;  
18 and

19 (2) "violent felony" means:

20 (a) murder in the ~~[first or]~~ second  
21 degree, as provided in Section 30-2-1 NMSA 1978;

22 (b) shooting at or from a motor vehicle  
23 resulting in great bodily harm, as provided in Subsection B of  
24 Section 30-3-8 NMSA 1978;

25 (c) kidnapping resulting in ~~[great~~

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1 ~~bodily harm inflicted~~] physical injury or a sexual offense upon  
2 the victim by [~~his~~] the victim's captor, as provided in  
3 Subsection B of Section 30-4-1 NMSA 1978; [~~and~~]

4 (d) criminal sexual penetration, as  
5 provided in Subsection C or Paragraph (5) or (6) of Subsection  
6 D of Section 30-9-11 NMSA 1978; and

7 (e) robbery while armed with a deadly  
8 weapon resulting in great bodily harm as provided in Section  
9 30-16-2 NMSA 1978 and Subsection A of Section 30-1-12 NMSA  
10 1978. "

11 Section 3. Section 31-20A-1 NMSA 1978 (being Laws 1979,  
12 Chapter 150, Section 2) is amended to read:

13 "31-20A-1. CAPITAL FELONY--SENTENCING PROCEDURE. --

14 A. At the conclusion of all capital felony cases  
15 heard by jury, and after proper charge from the court and  
16 argument of counsel, the jury shall retire to consider a  
17 verdict of guilty or not guilty without any consideration of  
18 punishment. In nonjury capital felony cases, the judge shall  
19 first consider a finding of guilty or not guilty without any  
20 consideration of punishment.

21 B. Upon a verdict by the jury or judge that the  
22 defendant is guilty of a capital felony, or upon a plea of  
23 guilty to a capital felony, the court shall conduct a separate  
24 sentencing proceeding to determine whether the defendant should  
25 be sentenced to life imprisonment without possibility of

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1 release or parole or to death [~~or life imprisonment as~~  
2 ~~authorized herein~~]. In a jury trial, the sentencing proceeding  
3 shall be conducted as soon as practicable by the original trial  
4 judge before the original trial jury. In a nonjury trial, the  
5 sentencing proceeding shall be conducted as soon as practicable  
6 by the original trial judge. In the case of a plea of guilty  
7 to a capital felony, the sentencing proceeding shall be  
8 conducted as soon as practicable by the original trial judge or  
9 by a jury upon demand of a party.

10 C. In the sentencing proceeding, all evidence  
11 admitted at the trial shall be considered, and additional  
12 evidence may be presented as to the circumstances of the crime  
13 and as to any aggravating or mitigating circumstances pursuant  
14 to Sections [~~6 and 7 of this act~~] 31-20A-5 and 31-20A-6 NMSA  
15 1978.

16 D. In a jury sentencing proceeding, the judge shall  
17 give appropriate instructions and allow argument, and the jury  
18 shall retire to determine the punishment to be imposed. In a  
19 nonjury sentencing proceeding, or upon a plea of guilty, where  
20 no jury has been demanded, the judge shall allow argument and  
21 determine the punishment to be imposed."

22 Section 4. Section 31-20A-2 NMSA 1978 (being Laws 1979,  
23 Chapter 150, Section 3) is amended to read:

24 "31-20A-2. DETERMINATION OF SENTENCE. --

25 A. Capital sentencing deliberations shall be guided

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1 by the following considerations:

2 (1) whether aggravating circumstances exist as  
3 enumerated in Section [~~6 of this act~~] 31-20A-5 NMSA 1978;

4 (2) whether mitigating circumstances exist as  
5 enumerated in Section [~~7 of this act~~] 31-20A-6 NMSA 1978; and

6 (3) whether other mitigating circumstances  
7 exist.

8 B. After weighing the aggravating circumstances and  
9 the mitigating circumstances, weighing them against each other,  
10 and considering both the defendant and the crime, the jury or  
11 judge shall determine whether the defendant should be sentenced  
12 to life imprisonment without possibility of release or parole  
13 or to death [~~or life imprisonment~~]. "

14 Section 5. Section 31-20A-2.1 NMSA 1978 (being Laws 1991,  
15 Chapter 30, Section 1) is amended to read:

16 "31-20A-2.1. [~~PROHIBITION AGAINST CAPITAL PUNISHMENT~~]  
17 SENTENCING OF MENTALLY RETARDED PERSONS--PRESENTENCING  
18 HEARING. --

19 A. As used in this section, "mentally retarded"  
20 means significantly subaverage general intellectual functioning  
21 existing concurrently with deficits in adaptive behavior. An  
22 intelligence quotient of seventy or below on a reliably  
23 administered intelligence quotient test shall be presumptive  
24 evidence of mental retardation.

25 B. [~~The penalty~~] A sentence of death shall not be

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1 imposed on ~~[any]~~ a person who is mentally retarded.

2 C. Upon motion of the defense requesting a ruling  
3 that the penalty of death be precluded under this section, the  
4 court shall hold a hearing, prior to conducting the sentencing  
5 proceeding under Section 31-20A-3 NMSA 1978. If the court  
6 finds, by a preponderance of the evidence, that the defendant  
7 is mentally retarded, it shall sentence the defendant to life  
8 imprisonment without possibility of release or parole. A  
9 ruling by the court that evidence of diminished intelligence  
10 introduced by the defendant does not preclude the death penalty  
11 under this section shall not restrict the defendant's  
12 opportunity to introduce ~~[such]~~ the evidence at the sentencing  
13 proceeding or to argue that ~~[that]~~ the evidence should be given  
14 mitigating significance. If the sentencing proceeding is  
15 conducted before a jury, the jury shall not be informed of any  
16 ruling denying a defendant's motion under this section."

17 Section 6. Section 31-20A-3 NMSA 1978 (being Laws 1979,  
18 Chapter 150, Section 4) is amended to read:

19 "31-20A-3. COURT SENTENCING. --In a jury sentencing  
20 proceeding in which the jury unanimously finds beyond a  
21 reasonable doubt and specifies at least one of the aggravating  
22 circumstances enumerated in Section ~~[6 of this act]~~ 31-20A-5  
23 NMSA 1978, and unanimously specifies the sentence of death  
24 pursuant to Section ~~[3 of this act]~~ 31-20A-2 NMSA 1978, the  
25 court shall sentence the defendant to death. ~~[Where]~~ When a

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1 sentence of death is not unanimously specified, or the jury  
2 does not make the required finding, or the jury is unable to  
3 reach a unanimous verdict, the court shall sentence the  
4 defendant to life imprisonment without possibility of release  
5 or parole. In a nonjury sentencing proceeding and in cases  
6 involving a plea of guilty, where no jury has been demanded,  
7 the judge shall determine and impose the sentence, but he shall  
8 not impose the sentence of death except upon a finding beyond a  
9 reasonable doubt and specification of at least one of the  
10 aggravating circumstances enumerated in Section [~~6 of this act~~]  
11 31-20A-5 NMSA 1978. "

12 Section 7. Section 31-20A-5 NMSA 1978 (being Laws 1979,  
13 Chapter 150, Section 6, as amended) is amended to read:

14 "31-20A-5. AGGRAVATING CIRCUMSTANCES. --The aggravating  
15 circumstances to be considered by the sentencing court or jury  
16 pursuant to the provisions of Section 31-20A-2 NMSA 1978 are  
17 limited to the following:

18 A. the [~~victim was~~] defendant, with the deliberate  
19 intent to kill, murdered a peace officer who was acting in the  
20 lawful discharge of an official duty when he was murdered;

21 B. the murder was committed with the deliberate  
22 intent to kill in the commission of or attempt to commit  
23 [~~kidnaping~~] kidnapping, criminal sexual contact of a minor or  
24 criminal sexual penetration;

25 C. the murder was committed with the deliberate

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1 intent to kill by the defendant while attempting to escape from  
2 a penal institution of New Mexico;

3 D. while incarcerated in a penal institution in New  
4 Mexico, the defendant, with the deliberate intent to kill,  
5 murdered a person who was at the time incarcerated in or  
6 lawfully on the premises of a penal institution in New Mexico.  
7 As used in this subsection, "penal institution" includes  
8 facilities under the jurisdiction of the corrections [~~and~~  
9 ~~criminal rehabilitation~~] department and county and municipal  
10 jails;

11 E. while incarcerated in a penal institution in New  
12 Mexico, the defendant, with the deliberate intent to kill,  
13 murdered an employee of the corrections [~~and criminal~~  
14 ~~rehabilitation~~] department;

15 F. the capital felony, with the deliberate intent  
16 to kill, was committed for hire; [~~and~~]

17 G. the capital felony, with the deliberate intent  
18 to kill, was murder of a witness to a crime or any person  
19 likely to become a witness to a crime, for the purpose of  
20 preventing report of the crime or testimony in any criminal  
21 proceeding or for retaliation for the victim having testified  
22 in any criminal proceeding;

23 H. the defendant, with the deliberate intent to  
24 kill, murdered a child less than thirteen years of age;

25 I. the defendant, with the deliberate intent to

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1 kill, murdered a person because of that person's present or  
2 former status as a peace officer or employee of the corrections  
3 department;

4 J. the defendant, with the deliberate intent to  
5 kill, murdered two or more people in a single incident; and

6 K. the defendant, with the deliberate intent to  
7 kill, committed a murder in a heinous manner."

8 Section 8. Section 31-21-10 NMSA 1978 (being Laws 1980,  
9 Chapter 28, Section 1, as amended) is amended to read:

10 "31-21-10. PAROLE AUTHORITY AND PROCEDURE. --

11 A. An inmate of an institution who was sentenced to  
12 life imprisonment [~~as the result of the commission of a capital~~  
13 ~~felony, who~~] because the inmate was convicted of three violent  
14 felonies and sentenced pursuant to Sections 31-18-23 and  
15 31-18-24 NMSA 1978 or [~~who~~] because the inmate was convicted of  
16 two violent sexual offenses and sentenced pursuant to  
17 Subsection A of Section 31-18-25 NMSA 1978 and Section 31-18-26  
18 NMSA 1978 becomes eligible for a parole hearing after [~~he~~] the  
19 inmate has served thirty years of [~~his~~] the inmate's sentence.  
20 Before ordering the parole of an inmate sentenced to life  
21 imprisonment, the board shall:

22 (1) interview the inmate at the institution  
23 where [~~he~~] the inmate is committed;

24 (2) consider all pertinent information  
25 concerning the inmate, including:

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- 1 (a) the circumstances of the offense;  
2 (b) mitigating and aggravating  
3 circumstances;  
4 (c) whether a deadly weapon was used in  
5 the commission of the offense;  
6 (d) whether the inmate is a habitual  
7 offender;  
8 (e) the reports filed under Section  
9 31-21-9 NMSA 1978; and  
10 (f) the reports of such physical and  
11 mental examinations as have been made while in an institution;  
12 (3) make a finding that a parole is in the  
13 best interest of society and the inmate; and  
14 (4) make a finding that the inmate is able and  
15 willing to fulfill the obligations of a law-abiding citizen.

16 If parole is denied, the inmate sentenced to life  
17 imprisonment shall again become entitled to a parole hearing at  
18 two-year intervals. The board may, on its own motion, reopen  
19 any case in which a hearing has already been granted and parole  
20 denied.

21 ~~[B. Unless the board finds that it is in the best~~  
22 ~~interest of society and the parolee to reduce the period of~~  
23 ~~parole, a person who was convicted of a capital felony shall be~~  
24 ~~required to undergo a minimum period of parole of five years.~~  
25 ~~During the period of parole, the person shall be under the~~

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1 ~~guidance and supervision of the board.]~~

2 B. An inmate of an institution who is sentenced to  
3 life imprisonment without possibility of release or parole as  
4 the result of his conviction for a capital felony is not  
5 eligible for parole and shall remain incarcerated for the  
6 entirety of the inmate's natural life.

7 C. Except for sex offenders as provided in Section  
8 31-21-10.1 NMSA 1978, an inmate who was convicted of a first,  
9 second or third degree felony and who has served the sentence  
10 of imprisonment imposed by the court in an institution  
11 designated by the corrections department shall be required to  
12 undergo a two-year period of parole. An inmate who was  
13 convicted of a fourth degree felony and who has served the  
14 sentence of imprisonment imposed by the court in an institution  
15 designated by the corrections department shall be required to  
16 undergo a one-year period of parole. During the period of  
17 parole, the person shall be under the guidance and supervision  
18 of the board.

19 D. ~~[Every]~~ A person ~~[white]~~ who is on parole shall  
20 remain in the legal custody of the institution from which ~~[he]~~  
21 the person was released, but shall be subject to the orders of  
22 the board. The board shall furnish to each inmate as a  
23 prerequisite to ~~[his]~~ the inmate's release under its  
24 supervision a written statement of the conditions of parole  
25 that shall be accepted and agreed to by the inmate as evidenced

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1 by [~~his~~] the inmate's signature affixed to a duplicate copy to  
2 be retained in the files of the board. The board shall also  
3 require as a prerequisite to release the submission and  
4 approval of a parole plan. If an inmate refuses to affix [~~his~~]  
5 the inmate's signature to the written statement of the  
6 conditions of [~~his~~] the inmate's parole or does not have an  
7 approved parole plan, [~~he~~] the inmate shall not be released and  
8 shall remain in the custody of the institution in which [~~he~~]  
9 the inmate has served [~~his~~] the sentence, excepting parole,  
10 until such time as the period of parole [~~he~~] the inmate was  
11 required to serve, less meritorious deductions, if any,  
12 expires, at which time [~~he~~] the inmate shall be released from  
13 that institution without parole, or until such time that [~~he~~]  
14 the inmate evidences [~~his~~] acceptance and agreement to the  
15 conditions of parole as required or receives approval for [~~his~~]  
16 the inmate's parole plan or both. Time served from the date  
17 that an inmate refuses to accept and agree to the conditions of  
18 parole or fails to receive approval for [~~his~~] the inmate's  
19 parole plan shall reduce the period, if any, to be served under  
20 parole at a later date. If the district court has ordered that  
21 the inmate make restitution to a victim as provided in Section  
22 31-17-1 NMSA 1978, the board shall include restitution as a  
23 condition of parole. The board shall also personally apprise  
24 the inmate of the conditions of parole and [~~his~~] the inmate's  
25 duties relating thereto.

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1           E. When a person on parole has performed the  
2 obligations of ~~[his]~~ the person's release for the period of  
3 parole provided in this section, the board shall make a final  
4 order of discharge and issue ~~[him]~~ the person a certificate of  
5 discharge.

6           F. Pursuant to the provisions of Section 31-18-15  
7 NMSA 1978, the board shall require the inmate as a condition of  
8 parole:

9                   (1) to pay the actual costs of ~~[his]~~ the  
10 inmate's parole services to the adult probation and parole  
11 division of the corrections department for deposit to the  
12 corrections department intensive supervision fund not exceeding  
13 one thousand eight hundred dollars (\$1,800) annually to be paid  
14 in monthly installments of not less than twenty-five dollars  
15 (\$25.00) and not more than one hundred fifty dollars (\$150), as  
16 set by the appropriate district supervisor of the adult  
17 probation and parole division, based upon the financial  
18 circumstances of the defendant. The defendant's payment of the  
19 supervised parole costs shall not be waived unless the board  
20 holds an evidentiary hearing and finds that the defendant is  
21 unable to pay the costs. If the board waives the defendant's  
22 payment of the supervised parole costs and the defendant's  
23 financial circumstances subsequently change so that the  
24 defendant is able to pay the costs, the appropriate district  
25 supervisor of the adult probation and parole division shall

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1 advise the board and the board shall hold an evidentiary  
2 hearing to determine whether the waiver should be rescinded;  
3 and

4 (2) to reimburse a law enforcement agency or  
5 local crime stopper program for the amount of any reward paid  
6 by the agency or program for information leading to ~~his~~ the  
7 defendant's arrest, prosecution or conviction.

8 G. The provisions of this section shall apply to  
9 all inmates except geriatric, permanently incapacitated and  
10 terminally ill inmates eligible for the medical and geriatric  
11 parole program as provided by the Parole Board Act. "

12 Section 9. REPEAL. --Section 31-18-14.1 NMSA 1978 (being  
13 Laws 2001, Chapter 128, Section 1) is repealed.

14 Section 10. APPLICABILITY. --The provisions of this act  
15 apply only to a person convicted of a capital felony offense  
16 committed on or after July 1, 2005. As to a person convicted  
17 of a capital felony offense committed prior to July 1, 2005,  
18 the law regarding a capital felony offense in effect at the  
19 time the offense was committed shall apply.

20 Section 11. EFFECTIVE DATE. --The effective date of the  
21 provisions of this act is July 1, 2005.

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